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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No. 364

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WILLIAM BUNN

Petitioner

Versus

CITY OF ATLANTA

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF GEORGIA

A. T. WALDEN
STEPHENS MITCHELL
Counsel for Petitioner

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No.....

WILLIAM BUNN, PETITIONER
VS.
THE CITY OF ATLANTA

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF GEORGIA.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioner William Bunn shows:

On the 6th day of February 1941 the City of Atlanta served a summons on him charging him with violation of a Municipal Ordinance adopted on May 7th, 1940, by the Mayor and Council of the City of Atlanta, Georgia.

This ordinance read as follows:

> "Be it Ordained by the Mayor and General Council of the City of Atlanta that from and after the passage of this Ordinance, it shall be the duty of all owners and/or operators of taxicabs or autos for hire within the City of Atlanta to indicate on the side of vehicle whether the

taxicab or auto for hire shall be used by and shall serve white or Negro passengers. The sign shall be painted on under the owner's and operator's sign and shall be in letters not less than One Inch in Height. The sign shall read "For White Passengers Only" or "For Colored Passengers Only" as the case may be. The sign as well as the Auto for Hire or Taxi sign shall be painted on both sides of vehicle in an oil paint of contrast color of vehicle that can not be rubbed or washed off, and shall remain on car so long as the operator holds a permit and license to operate that machine.

No such taxicab or auto for hire owner or operator shall carry both white and Negro passengers in the same vehicle, but shall serve one or the other of said races to the exclusion of the other. There shall be white drivers for carrying white passengers and colored drivers for carrying colored passengers.

Any person convicted of violating this ordinance shall be subject to a fine not to exceed $100.00, or sentenced to the public works of the City of Atlanta for a period not to exceed thirty days, any part of either one or both in the discretion of the Recorder, and is also subject to having his driver's permit and license revoked by the Police Committee and General Council.

Applicants in filing their petition for permits shall state on their applications whether the taxicab or auto for hire is to be used for hauling white or colored passengers.

All ordinances and parts of ordinances in conflict with this ordinance be and the same are

hereby repealed.

Adopted by General Council May 6, 1940.
Approved May 7th, 1940.

William B. Hartsfield, Mayor."

On the 6th day of February 1941 the case of City of Atlanta vs. William Bunn came on for a trial before the Recorder of the City of Atlanta, and the following judgment was rendered by the Recorder of the City of Atlanta:

"The above entitled case came on for a hearing before me on the 6th day of February, 1941.

The defendant admitted that he had operated an automobile for hire in the City of Atlanta, that he had built up a patronage of both white and colored people and that in operating it he had not complied with the ordinance of May 7th, 1940.

The only defense offered by him was that the Ordinance of May 7th, 1940, was unconstitutional on the grounds that: It violated section 1, paragraph 2 of the Constitution of Georgia which declares "Protection to person and property is the paramount duty of government, and shall be impartial and complete," and that it violates the 14th Amendment to the Constitution of the United Saes which declares: "No Sate shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any

person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Because: (1) It deprived him of a right to solicit trade from all of the people of Atlanta, who are divided in the approximate proportion of two-thirds white and one-third colored.

(2) It was an unlawful exercise of the police power in that it attempted to confine carriers for hire to hauling and transporting passengers of one race and deprived them of the opportunity to carry passengers of another race or color.

(3) It was an attempt to deprive Negroes of the opportunity of soliciting and accepting the patronage of white people, and vice versa.

(4) It was discriminatory in that it was confined to carriers using automotive vehicles, and did not include busses, street cars or horse drawn vehicles.

The Court considered this defense, and holds that it has no merit, and finds in favor of the City of Atlanta and imposes a fine of $25.00 on the defendant together with $..... costs of this proceeding.

This 6th day of February, 1941.

A. W. Callaway
Recorder of the City of Atlanta."

This judgment states all of the material facts of the trial.

On the 7th day of February 1941, a timely and appropriate petition for the writ of certiorari was presented to Fulton Superior Court, in accordance with the rules of practice and procedure in such cases, and on the same day, an order giving sanction to said petition and ordering the writ of certiorari to issue was granted by said court.

On the 10th day of April 1941 the certiorari came on for a hearing in Fulton Superior Court, and after argument the certiorari was overruled, the order overruling same reading as follows:

"William Bunn vs. City of Atlanta } No. 133, 112 FULTON SUPERIOR COURT.

The above stated certiorari involves the constitutionality of a city ordinance regulating the use of the streets of the city for the operation of motor vehicles for the carriage of passengers. The purpose of the ordinance is to preserve peace and prevent disorder upon the streets and thoroughfares of the city.

Viewing the ordinance in that respect, and considering the charge to be a violation of that part of the ordinance which related to signs on the cars and the uses to be made of the cars, I am constrained to uphold the ordinance as being within the police power of the city. The question of the race of drivers was not involved in this case.

Wherefore, the within certiorari is overruled and

dismissed, judgment against plaintiff in certiorari for the costs of the case.

This the 10th day of April, 1941.

John D. Humphries
Judge Superior Court, Atlanta Circuit."

Within the time prescribed by law your petitioner filed his bill of exceptions to the overruling of the certiorari to the Supreme Court of Georgia. In the bill of exceptions the nature of the case and the errors complained of were plainly, fully and distinctly set forth and all material necessary to a clear understanding of the case, together with the petition for writ of certiorari, and the writ of certiorari, and the order of the court overruling the certiorari was attached to the bill of exceptions.

On the 11th day of September 1941, the Supreme Court of Georgia transferred the bill of exceptions to the Court of Appeals of Georgia, on the ground that the Supreme Court was without jurisdiction.

After argument, the Court of Appeals of Georgia affirmed the order of the Superior Court of Fulton County in overruling the certiorari, and in so doing, passed upon the constitutional questions raised by the petitioner in the Recorder's Court of the City of Atlanta, and in Fulton Superior Court. (See *Bunn vs. City of Atlanta* 19 S. E. 2d. 553.

A motion for re-hearing was filed by your peti-

tioner on the 28th day of March 1942 and was denied on 2nd. day of April 1942.

A petition for certiorari to the Supreme Court of Georgia was filed by your petitioner on 24th day of April 1942 and was, on 19th day of May 1942 denied by the Supreme Court of Georgia, the remittitur being sent to and filed in Court of Appeals of Georgia on June 1, 1942.

The Court of Appeals of Georgia, and the Supreme Court of Georgia have thus established as law in the State of Georgia a municipal ordinance which has deprived your petitioner of the rights and privileges guaranteed him under the Constitution of the United States and under the Constitution of the State of Georgia as is set out more fully hereinafter.

PART I.

The City of Atlanta and the State of Georgia have denied to petitioner his equal rights under the Constitution of Georgia, and under the Constitution of the United States, and he has been arbitrarily and unjustly discriminated against, in the following manner, to-wit:

(a) Petitioner has been subjected to an unreasonable, unjust and arbitrary licensing ordinance;

(b) The licensing ordinance under discussion is discriminatory and arbitrary in that it prohibits the exercise of a common, natural and inherent right of

an individual to conduct a business by contracting with other people to render service to them.

(c) The licensing ordinance under discussion is in violation of the Constitution of the State of Georgia, and in violation of the Constitution of the United States because it attempts to prohibit Negroes from transporting white people and white people from transporting Negroes.

(d) The licensing ordinance under discussion is unreasonable and is based on the theory set forth in the case of *Schlesinger vs. The City of Atlanta* 161 Ga., 148; 129 S. E. 861, that a city in granting permission to operate vehicles for hire on its streets is not bound in any rule of reason.

Each and every point set forth and here presented was properly raised, and argued, and decided in the Recorder's court of the City of Atlanta, in the Superior Court of Fulton County, in the Court of Appeals of the State of Georgia, and in the Supreme Court of Georgia.

The validity of the ordinance under which petitioner was convicted was drawn in question, and its validity was attacked by plea in the Recorder's court of the City of Atlanta, and the validity of this plea was properly re-urged on the hearing of the certiorari in the Superior Court of Fulton County, and was properly raised in the bill of Exceptions in the Court of Appeals of Georgia, and was properly raised in the certiorari in the Supreme Court of Georgia. This question is now properly before this Honorable Court.

PART II.

Petitioner has been deprived of his rights under Section I, paragraph 2 of the constitution of Georgia which declares "Protection to person and property is the paramount duty of Government and shall be impartial and complete" because

(a) An ordinance prohibiting Negroes from contracting with white people is not impartial.

(b) An ordinance prohibiting any class of persons from doing business with two-thirds of the population of the area affected by the ordinance is not impartial.

(c) An ordinance defining terms on which any trade may be carried on, must follow the terms of the constitution and must be impartial, and a prohibition which kept one-third of the population from soliciting the trade of the other two-thirds is not impartial.

PART III.

Petitioner has been deprived of his property right to earn a livelihood in violation of the 14th Amendment to the constitution of the United States because:

(a) The ordinance under discussion is arbitrary in that it goes outside of the discretion that a city council may exercise in that the discrimination would be a prohibition of the exercise of a common, natural and inherent right of an individual conducting a business to enter into contract with the general public.

(b) Because the Court of Appeals of Georgia and the Supreme Court of Georgia have held that a Municipality in granting permission to persons to operate taxicabs on its streets may prescribe unreasonable conditions, as a prerequisite to the use of the streets, and that individuals desiring to use the streets must comply with such conditions whether reasonable or unreasonable.

PART IV.

All of the questions raised above, were properly raised in the Recorder's Court of the City of Atlanta, in the Superior Court of Fulton County, in the Court of Appeals of Georgia, and in the Supreme Court of Georgia.

A substantial Federal question is presented in this petition, and it is before this court for review.

WHEREFORE Petitioner prays that an order granting this petition for writ of certiorari be entered, notifying the court of Appeals of Georgia of the granting of the petition, and that the certified transcript of all proceedings of the said Court of Appeals in the case entitled William Bunn vs. City of Atlanta No. 29330 transmitted herewith be treated as though sent up in response to a formal writ, to the end that the said cause may be reviewed and determined by this court, as provided in 28 U. S. C. A. 344 (b) that the said judgment of the Court of Appeals of Georgia and the judgment of the Supreme Court of Georgia in denying a certiorari on the judgment